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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,622	06/26/2006	Setsuo Tsujii	2006_0833A	9676
513 7590 08/31/2009 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER TOUSSAINT, DALILA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
08/31/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,622

Applicant(s)

TSUJII ET AL.

Examiner

DALILA TOUSSAINT

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blake et al. US patent 4368211 in view of Bradford et al. US patent 4375431.

- a. Referring to claims 1, 3 and 5-6, Blake disclose an acidic whipping cream, made of soluble soybean, as described below: (Blake; column 5, line 39-57)

Whipping Agent

The present dessert compositions also essentially contain from about 0.3 to 1.5 of an acid-stable whipping agent. Better results are obtained when the present compositions contain from about

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0.4 to 0.8 of the whipping agent. By "acid-stable" it is meant herein that the presently employable whipping agents be able to aerate the present dessert compositions which have a pH ranging from about 2.5 to 5.5 to densities of between about 0.2 to 0.95 g./cc. when the whipping agent is present within the above specified range.

Whipping agents are well known in the food art and selection of suitable materials for use herein as the acid-stable whipping agent will pose no problem to the skilled artisan. Suitable materials can be derived as protein hydrolyzates from, for example, vegetable proteins. The protein hydrolyzates employed herein are water soluble (i.e., soluble at least to about 20% by weight at 25.degree. C. throughout the pH range of about 2.0 to 10.0).

Blake further discloses examples of soy protein hydrolyzates sources that are used as whipping agents within its embodiment. However, Blake is silent to subjecting the soybean to a treatment for removing or inactivating a polyanionic substance or to adding a polycationic substance.

Bradford discloses an enzymatically modified soy protein isolate, used effectively in foaming or whipping application (Bradford; column 9, line 3-4 and example 2), that is treated with aluminum. The aluminum treatment uniquely alters the compositional and functional characteristics of the treated protein. Effectively such that the treated product possess

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many desirable attributes of protein essentially free from phytate and phytic acid (polyanionic substance) while retaining the desired native protein characteristics (Bradford; column 5, line 60-65). Essentially, the aluminum function as a scavenger and chelating agent (inactivator) for the phytic acid and phytate contaminant (Bradford; column 9, line 15-22); resulting in protein which possess improved functional and nutritional utility and quality over untreated proteins (Bradford; column 8, line 1-4). Bradford further discloses hydrolyzing the vegetable protein (Bradford; column 9, line 5-23), such that when used as a whipping agent to prepared frappe, the agents yielded good foam stability, appearance, peaking and organoleptic qualities (Bradford; column 13, line 21-27).

Regarding the whipping agent of Blake, it would have been obvious to one having ordinary skill in the art at the time of invention to include enzymatically modified soy protein isolate of Bradford, to improve foam stability, appearance, peaking, and organoleptic qualities of the food product. As Blake discloses above, it well within the realm of an artisan to select suitable whipping agents.

b. Referring to claim 2, Blake discloses a cream further comprising acidic taste substance (Blake; column 7, line 45-63).

Response to Arguments

4. Applicant's arguments with respect to claims 1-3 and 5-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DALILA TOUSSAINT** whose telephone number is (571)270-7088. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DT

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794